SUPREME COURT, U. S.

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No. 1134

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1968

GEORGE T. WILLIAMS

and

MARCIA WILLIAMS,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Comes now the Petitioners herein, by and through counsel, to petition this Court for a hearing and Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit and in support thereof do state:

OPINIONS BELOW

That on March 29, 1967, by a decision of the Tax Court of the United States, 47 T.C. 68, the Petitioners were disallowed a bona fide deduction for interest paid on their Federal Income Tax Returns.

That on *October 21, 1968,* by decision of the Sixth Circuit Court of Appeals in case number 18, 285 said decision of the Tax Court was affirmed.

JURISDICTION

The jurisdiction of this Court is based upon 28 U.S.C. Section 1254 (1).

REASONS FOR GRANTING THE WRIT

1. The decision of the Sixth Circuit Court in this case is in conflict with the decision of the Seventh Circuit Court of Appeals in *Journal Company* v. *Commissioner of Internal Revenue,* 42-1 U.S.T.C. 9232, (125F. 2nd 349) which allowed a deduction for interest paid agreeing it was compensation for the use of money arising out of obligations which may be *"Contingent"* as well as absolute.

2. In addition that the decision of the lower Court is in conflict with the decision of the Supreme Court in *Deputy et al.* v. *Dupont,* 40-1 U.S.T.C. 9161 (60 S. Ct. 363), which sets forth clearly the definition of interest within the Internal Revenue Code into which class fits the payment of the Petitioner.

3. Also, that the decision is in conflict with settled legal precedent. The revival of a barred debt by an acknowledgement or new promise also revives the claim for interest on such debt for the whole period; *In Re Searles Will,* 66 N.Y.S. 2nd 889, 271 App. Div. 889; and a new promise to pay interest will serve to start the Statute anew as to the whole debt and not merely interest: *Kelly* v. *Leachman,* 33 P. 44, 3 Idaho 629 (see 54 C.J.S. 2nd Limitation on Actions, Section 320, Subsection (b), Interest).

4. And finally the decision of the lower Court is in conflict with the Internal Revenue Code of 1954, Section 6601.

QUESTION PRESENTED

That the question presented for review is: "Was any portion of a sum paid by Petitioner, George T. Williams, for the reinstatement of a certain Insurance Policy with the Veteran's Administration interest within the meaning of Section 163 of the Internal Revenue Code of 1954."

Section 163 (a) of the Internal Revenue Code of 1954 sets forth the law in point:

(a) General Rule — there shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

STATEMENT OF FACTS

On February 16, 1943, petitioner-husband, a civil engineer by profession enlisted in the U. S. Army. Early in his training he bought a $10,000.00 National Service Life Insurance Policy from the U. S. Government. On February 1, 1949, he converted the term contract to a 20-payment contract, policy number V 612 42 76. In 1951, he got sick and stayed about four (4) months in the hospital. He had no income then, could not pay the premiums, and the contract lapsed on July 1, 1951. This policy contained the following pertinent provisions:

2. REINSTATEMENT

If this policy has lapsed but has not been surrendered for its net cash value, it may be reinstated at any time provided the following requirements are met:

(a) A written application signed by the Insured, and evidence of health satisfactory to the Administrator and must be furnished if required.

(b) Premiums for all monies in arrears must be paid, with interest from their respective due dates at a rate to be determined by the Administrator.

(c) Any indebtedness on the policy at the time of lapse must be repaid or reinstated, together with policy loan interest thereon. Any excess of the indebtedness and interest over the reserve of this policy at the time of reinstatement must be paid.

7. EXTENDED TERM INSURANCE

If this policy lapses after being in force at least three (3) months, it will be automatically extended as term insurance. The amount of the extended term insurance will be the face amount of this policy less any indebtedness. The term of such insurance will run from the date of lapse for as long as the reserve at that time plus any dividend accumulations less any indebtedness will purchase when applied as a net single premium at the Insured's attained age. * * *

8. POLICY LOANS

Provided this policy is not lapsed, the Insured may obtain a loan on the security of this policy at any time after the end of the first policy year. * * *

The loan will bear interest at a rate to be determined by the Administrator. Any interest not paid when due will be added to the existing loan and bear interest at the same rate. If at time the indebtedness equals or exceeds the reserve plus any dividend accumulations, this policy will cease and become void. The indebtedness on this policy at any time includes accrued interest.

In 1954 he tried to reinstate the policy in accord with Clause 2, which provides for such reinstatement upon the insured showing good health and paying any *indebtedness* (premiums in arrears and any unpaid loan) plus *interest*

on such indebtedness. The U. S. Veterans Administration, the insurer, required ten (10) years good health from 1951.

In 1961 he tried again to reinstate the policy. The health examination results satisfied the Veterans Administration and reinstatement was made upon his payment of $459.54 on October 14, 1961, (15a, 16a, 18a). On December 30, 1961, he paid another $2,645.00 for a total of $5,104.54 in 1961. Of the total paid to the Veterans Administration the petitioner-husband calculated $787.64, to be interest, at the rate of 4% upon the remainder indebtedness made up of an old loan of $333.00, plus premiums in arrears of $2,620.80, less dividend credit of $636.90. The petitioners deducted the $787.64, on their 1961 income tax return as interest paid on indebtedness as allowed by Section 163 of the Internal Revenue Code.

The $787.64, was made up of $172.34 interest on the old loan to October 31, 1961, $595.90 interest on back premiums to October 31, 1961, and $19.40 interest on a new loan of $2,584.00 from October 31, 1961, to December 31, 1961.

On November 15, 1965, after an examination by agents of the Internal Revenue Service, petitioners were issued a Statutory 90-Day Letter Form L-21A. Pursuant to the terms of the Statutory Notice, petitioner filed a Petition in the Tax Court of the United States on January 24, 1966, shown by Docket No. 458-66. (3a-7a)

On March 29, 1967, the opinion of the Tax Court was rendered in the case of *Williams* v. *the Commissioner*, 47C. No. 68 in which the deduction, the subject of this appeal, was not allowable. (20a-28a).

On September 28, 1967, taxpayer filed a Petition for review with the Sixth Circuit Court of Appeals, bringing this matter before the Court. Section 7482 (a) of the

Internal Revenue Code of 1954 establishes the jurisdiction of the Sixth Circuit Court of Appeals in regard to decisions of the Tax Court of the United States.

ARGUMENT

The *Journal Company* v. *Commissioner of Internal Revenue* case, heard in the Seventh Circuit Court of Appeals, No. 7819 October term, 1941, January session, 1942, 125 F 2nd 349, is clearly in conflict with *Williams* v. *Commissioner,* herein sought to be reviewed. In *Journal Company,* a deduction for interest was allowed. The Court agreed with the petitioner that the payment was compensation for the use of money arising out of obligations which may be contingent as well as absolute.

The Testamentary Trustees of the Estate of Mr. Nieman entered into an agreement with the Journal Company et al. to sell certain stock in the estate (actually Journal Company stock). The agreement contained the following provision:

> That due to the necessity of securing the approval by a competent court of the sale of the stock, the delivery thereof and the payment therefor may be considerably delayed after the date of action hereon by you; subsequent to March 1, 1936 and pending such delivery and payment, interest on the purchase price shall be paid by the purchasers at the rate of six per cent per annum and the price per share herein offered shall be reduced by the total amount of dividends per share, if any, which may hereafter be declared and paid upon the said stock.

This provision calls for the payment of interest from a date following the signing but before the sale was effective and binding and before there was created an indebtedness since Probate Court approval was necessary to enforce performance and payment.

The Court concluded, "provision was made for loss through delay (in receipt of payment), by the payment of interest".

The Supreme Court in *Deputy et al.* v. *Dupont,* 40-1 U.S.T.C. 9161 (60 S. Ct. 363), sets forth the definition of interest as compensation for the use of money arising out of obligations which may be contingent as well as absolute. The Court stated also, "In sum, we cannot sacrifice the 'Plain, obvious and rational meaning' of the statute even for 'the exigency of a hard case'."

The Internal Revenue Code Section 6601 requires the payment of interest on assessments from the due date of the return until paid. In this case, interest is charged during a period when there was no indebtedness. Certainly *Williams* v. *The Commissioner* is in conflict with the Federal law.

Finally *Williams* v. *Commissioner* is in conflict with the settled legal precedent of *In re Searles Will,* 66 N.Y.S. 2nd 889, 271 App. Div. 889, and *Kelly* v. *Leachman,* 33 P. 44, 3 Idaho 629, which make enforceable interest on revived debts previous OUTLAWED by the Statute of Limitations.

The cases cited set the following pattern:

ALLOWED: Interest paid under a voidable purchase contract. *Journal Company, infra.*

REQUIRE: No sacrifice of the plain, obvious rational meaning of the Statute even for the "exigency of a hard case". *Dupont, infra.*

ALLOWED BY LAW: Interest on tax assessments during period when assesment was non-existent. Section 6601 I.R.C. 1954

ENFORCEABLE: Interest during barren period on debt revived after Statute of Limitation tolled. *In Re Searles Will* and *Kelly, infra.*

DISALLOWED: Interest paid on insurance premiums calculated during period between policy lapse and reinstatement. *Williams* v. *Commissioner.*

Clearly I see a conflict between *Williams* and *Journal Company,* the Sixth and Seventh Circuit; between *Williams* and *Dupont.* the Sixth Circuit and the Supreme Court; *Williams* and Section 6601 I.R.C. 1954, the Sixth Circuit and the Internal Revenue Code; *Williams* and *In Re Searles Will,* the Sixth Circuit and Common law.

Clearly I see a conflict.

A rose by any other name is still a rose.

.....

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APPENDIX

OPINION OF THE TAX COURT

47 T. C. No. 68

TAX COURT OF THE UNITED STATES

Docket No. 458-66

GEORGE T. WILLIAMS and
MARCIA J. WILLIAMS,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

(Filed March 29, 1967.)

Petitioner reinstated a lapsed insurance policy and paid amounts designated as "interest" on back premiums and on a loan outstanding at the time of lapse. *Held,* such amounts are not deductible under Sec. 163, I.R.C. 1954.

George T. Williams, pro se.
Robert A. Roberts, for the respondent.

TANNENWALD, *Judge*: Respondent determined deficiencies in petitioners' income tax for the taxable years and in the amounts as follows:

Year	*Deficiency*
1961	$360.88
1962	216.44
1963	49.51

All issues raised by the deficiency notice have been settled except the question whether any portion of the sum paid by petitioner in 1961 in connection with the reinstatement of a certain insurance policy constitutes interest within the meaning of section 163 of the Internal Revenue Code of 1954.[1]

FINDINGS OF FACT

Some of the facts are stipulated and are found accordingly.

George T. Williams and Marcia J. Williams are husband and wife with their legal residence in Cincinnati, Ohio, at the time of their filing the petition herein. They filed joint Federal income tax returns for the taxable year 1961 with the district director of internal revenue, Louisville, Kentucky, and for the taxable years 1962 and 1963 with the district director of internal revenue, Cincinnati, Ohio. Any reference to petitioner shall be to George, Marcia being a party to this proceeding solely by reason of having filed a joint return with George.

Some time prior to February 1, 1949, while petitioner was in the United States Army, he acquired a $10,000 National Service Life Insurance policy from the Federal Government. Effective as of February 1, 1949, petitioner converted this policy into a Twenty Payment Life Plan

[1] All references are to the Internal Revenue Code of 1954.

policy (hereafter referred to as the "policy") with a face value of $10,000. The policy contained the following pertinent provisions:

2. REINSTATEMENT

If this policy has lapsed but has not been surrendered for its net cash value, it may be reinstated at any time provided the following requirements are met:

(a) A written application signed by the Insured, and evidence of health satisfactory to the Administrator must be furnished if required.

(b) Premiums for all monies in arrears must be paid, with interest from their respective due dates at a rate to be determined by the Administrator.

(c) Any indebtedness on this policy at the time of lapse must be repaid or reinstated, together with policy loan interest thereon. Any excess of the indebtedness and interest over the reserve of this policy at the time of reinstatement must be paid.

7. EXTENDED TERM INSURANCE

If this policy lapses after being in force at least 3 months, it will be automatically extended as term insurance. The amount of the extended term insurance will be the face amount of this policy less any indebtedness. The term of such insurance will run from the date of lapse for as long as the reserve at that time plus any dividend accumulations less any indebtedness will purchase when applied as a net single premium at the Insured's attained age. * * *

8. POLICY LOANS

Provided this policy is not lapsed, the Insured may

> obtain a loan on the security of this policy at any time after the end of the first policy year. * * *
>
> The loan will bear interest at a rate to be determined by the Administrator. Any interest not paid when due will be added to the existing loan and bear interest at the same rate. *If at any time the indebtedness equals or exceeds the reserve plus any dividend accumulations, this policy will cease and become void.* The indebtedness on this policy at any time includes accrued interest. [Emphasis added.]

On March 15, 1951, petitioner obtained a loan of $333 as provided for in the policy.

Petitioner paid the monthly premiums of $20.80 during the period February 1, 1949 through June 1, 1951. The policy lapsed as of July 1, 1951 for nonpayment of premiums but, in accordance with the terms of the policy, continued in effect as extended term insurance until October 4, 1952.

In 1961, petitioner applied to have the policy reinstated in accordance with the "Reinstatement" provisions. After submission to the Veterans Administration of evidence of satisfactory health, the policy was reinstated, effective October 10, 1961 at the 1949 premium rate, upon the payment of $459.54 by petitioner in the form of a check dated October 14, 1961. The $459.54 which the Veterans Administration stated was necessary for the reinstatement was arrived at in the following manner:

Premiums due but not paid through October 31, 1961 (124 months at $20.80 per month)		$2,579.20
Four percent per annum on unpaid premiums		595.90
Outstanding loan as of July 1, 1951 plus 4% per annum thereon through October 31, 1961		505.34
Total (owed by petitioner)		3,680.44
Loan value of policy as of October 31, 1961	$2,584.00	
Accumulated dividends	636.90	
Total Credit		3,220.90
Amount of petitioner's check		$ 459.54

On their return for the taxable year 1961, petitioners claimed a deduction in the amount of $768.24 as "interest" attributable to the reinstatement of the policy. The sum of $768.24 was computed as follows:

"Interest" paid on past premiums	$595.90
"Interest" on 1951 loan ($333) for the period ended October 31, 1961	172.34
	$768.24

Respondent has disallowed the entire $768.24 claimed interest deduction.[2]

[2] Petitioner also deducted $19.40 as interest for the period ended December 31, 1961 on a new loan on the policy. Respondent has not questioned the deduction of this amount as interest, payment of which was represented by a check of petitioner dated December 30, 1961.

OPINION

Petitioner claims a deduction for the $768.24 which was paid to the Veterans Administration as "interest" at the time of reinstatement of petitioner's life insurance policy. Respondent contends that none of the $768.24 is deductible because it was not paid on "indebtedness," as required by section 163 (a). We agree with respondent.

The amount involved consists of $595.50 "interest" on the unpaid premiums and $172.34 "interest" on petitioner's 1951 loan.

Section 163 (a) provides:

> There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

The courts have interpreted "indebtedness" to require an existing unconditional enforceable obligation to pay a principal sum. *Autenreith* v. *Commissioner,* 115 F. 2d 856 (C.A. 3, 1940), affirming 41 B.T.A. 319 (1940); *Lewis C. Christensen,* 40 T.C. 563 (1963); *Gilman* v. *Commissioner,* 53 F. 2d 47 (C.A. 8, 1931), affirming 18 B.T.A. 1277 (1930). "In the business world 'interest on indebtedness' means compensation for the use or forbearance of money. In the absence of clear evidence to the contrary, we assume that Congress has used these words in that sense." See *Deputy* v. *Dupont,* 308 U.S. 488, 498 (1940). [Footnote omitted.]

The payments simply do not meet these standards. During the period from lapse to reinstatement, petitioner did not have the use of any of the insurance company's money, nor did the company forbear the collection of any money due it; petitioner had no coverage and owed nothing. The "interest" on cash premiums which he paid at the time of reinstatement represented no more than an ad-

ditional cost of reinstating the policy. The fact that a percentage was used in the computation and that it may have been designated "interest" does not avoid this conclusion.[3] The payment was necessitated solely by petitioner's election to reinstate the policy in October 1961.

The $172.34 "interest" paid on the $333 loan suffers from the same infirmity. In July 1951 the policy lapsed. The net cash value after the deduction of the loan plus accrued interest was applied to extended term insurance. From that time on there was no indebtedness. The $172.34 paid at the time of reinstatement in 1961 was simply an additional cost required by the insurance company to counterbalance the unavailability of the $333 as an income-producing item during the period between lapse and reinstatement — an essential element in the development of a proper reserve to a policy conversion at rates applicable to the age of petitioner in 1949 instead of his attained age in 1961.

In order to reflect the adjustments between the parties.

Decision will be entered under Rule 50.

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[3] Petitioner's attempt to distinguish *J. i. Fleischer*, a Memorandum Opinion of this Court dated April 26, 1943, and *Samuel J. Johnson*, a Memorandum Opinion of this Court dated June 8, 1943, on the ground that in those cases conversions of policies were involved, whereas he reinstated an existing policy, is without merit. Cf. I.T. 3545, 1942-1 C.B. 49, and Rev. Rul. 66-168, 1966-1 C.B. 25.

NO. 18,285

UNITED STATES COURT OF APPEALS
For The Sixth Circuit

GEORGE T. WILLIAMS and
MARCIA J. WILLIAMS,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER

(Filed October 21, 1968)

BEFORE WEICK, Chief Judge, and McCREE and COFFIN*, Circuit Judges.

This cause having come on to be heard upon the record and briefs and argument of counsel, and it appearing to this Court that the Tax Court's decision which is before us on review is correct, it is ORDERED that the decision of the Tax Court in this case may be, and it is, hereby affirmed.

Entered by order of the Court

/s/ CARL W. REUSS
Clerk

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* The Honorable Frank M. Coffin, United States Circuit Judge for the First Circuit, sitting by designation.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1134

GEORGE T. WILLIAMS and MARCIA J. WILLIAMS,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The per curiam order of the court of appeals (Pet. 16) is not yet officially reported. The decision of the Tax Court (Pet. 9-15) is reported at 47 T.C. 689.

JURISDICTION

The order of the court of appeals was entered on October 21, 1968 (Pet. 16). The time for filing the petition for certiorari was extended to and including

March 10, 1969, by order of Mr. Justice Stewart on January 22, 1969. The petition for writ of certiorari was filed on March 10, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant portion of Internal Revenue Code of 1954, Section 163(a) is:

> § 163. Interest. (a) General Rule—There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.
>
> * * * *
>
> [26 U.S.C. 163(a).]

QUESTION PRESENTED

Whether any parts of payments made to reinstate a lapsed insurance policy may properly be treated as deductible interest under Section 163(a) of the Internal Revenue Code of 1954.

STATEMENT

While serving in the United States Army, petitioner acquired a $10,000 National Service Life Insurance policy from the Government. He subsequently converted that policy into a Twenty Payment Life Plan policy (hereinafter referred to as the "policy") effective as of February 1, 1949. (Pet. 10.)

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[1] The issue in this case relates to transactions of George T. Williams. His wife, Marcia, is a party solely because joint returns were filed for the years in question. All references will be to George T. Williams as the petitioner.

The policy contained the following relevant provisions (Pet. 11-12):

2. REINSTATEMENT

If this policy has lapsed but has not been surrendered for its net cash value, it may be reinstated at any time provided the following requirements are met:

(a) A written application signed by the Insured, and evidence of health satisfactory to the Administrator must be furnished if required.

(b) Premiums for all monies in arrears must be paid, with interest from their respective due dates at a rate to be determined by the Administrator.

(c) Any indebtedness on this policy at the time of lapse must be repaid or reinstated, together with policy loan interest thereon. Any excess of the indebtedness and interest over the reserve of this policy at the time of reinstatement must be paid.

* * * *

7. EXTENDED TERM INSURANCE

If this policy lapses after being in force at least 3 months, it will be automatically extended as term insurance. The amount of the extended term insurance will be the face amount of this policy less any indebtedness. The term of such insurance will run from the date of lapse for as long as the reserve at that time plus any dividend accumulations less any indebtedness will purchase when applied as a net single premium at the Insured's attained age. * * *

8. Policy Loans

> Provided this policy is not lapsed, the Insured may obtain a loan on the security of this policy at any time after the end of the first policy year.
> * * *
> The loan will bear interest at a rate to be determined by the Administrator. Any interest not paid when due will be added to the existing loan and bear interest at the same rate. If at any time the indebtedness equals or exceeds the reserve plus any dividend accumulations, this policy will cease and become void. The indebtedness on this policy at any time includes accrued interest.

Petitioner paid the monthly premiums of $20.80 from the effective conversion date of February 1, 1949, through June 1, 1951. On March 15, 1951, he obtained a loan on the security of the policy in the amount of $333. On July 1, 1951, the policy lapsed for nonpayment of premiums, but, pursuant to the policy provisions, continued in effect as extended term insurance until October 4, 1952. (Pet. 12.)

In 1961, petitioner applied to have the policy reinstated in accord with the "Reinstatement" provisions. Effective October 10, 1961, the policy was reinstated at the 1949 premium rate, after submission of evidence of satisfactory health. For the reinstatement, petitioner paid cash in the amount of $459.54, and assumed a loan liability of $2,582.87 to the company. In determining the amount necessary to reinstate the policy, the insurer credited the sum of (1) the loan value of the policy as of October 31, 1961 ($2,584) and (2) the "accumulated" dividends ($636.90) against the sum of (1) the premiums that had not

been paid between July 1, 1951, and October 31, 1961 ($2,579.20), (2) four per cent per annum "interest" thereon ($595.90), (3) the 1951 loan ($333), and (4) four per cent per annum "interest" thereon ($172.34). (See Pet. 13.)

In his 1961 return petitioner claimed an "interest" deduction of $768.24, which was the sum of the $595.90 denominated as "interest" on past unpaid premiums and the $172.34 denominated as "interest" on the 1951 loan. (Pet. 13.) The Commissioner of Internal Revenue disallowed the claimed deduction on the ground that none of the $768.24 constituted interest paid on "indebtedness" within the purview of Section 163(a) of the Internal Revenue Code of 1954. The Tax Court upheld the Commissioner's determination (Pet. 14-15) and the court of appeals affirmed (Pet. 16).

ARGUMENT

The decision of the court of appeals is correct and there is no conflict or other reason warranting review by this Court.

1. Section 163(a) of the Internal Revenue Code of 1954 allows an individual to deduct "interest paid or accrued within the taxable year on indebtedness." By this section, Congress intended, and the Courts have held without exception, that interest to be deductible must be paid on an unconditional and legally enforceable obligation. *Autenreith* v. *Commissioner*, 115 F. 2d 856 (C.A. 3); *Gilman* v. *Commissioner*, 53 F. 2d 47 (C.A. 8). The controlling fact here, as found by the Tax Court (Pet. 14-15), is that, during the years

in which the policy was in lapsed status, the taxpayer held no money belonging to the insurance company and owed it no legally enforceable debt. The amounts designated as "interest" by the company in computing the amount required from petitioner as a condition of reinstatement of the policy [2] were merely a computational device by which the company realized the equivalent of the unpaid premiums plus the earnings that would have been realized had they been timely paid.

2. *Journal Co.* v. *Commissioner*, 125 F. 2d 349 (C.A. 7), upon which taxpayer relies (Pet. 2, 6), is not in conflict with the present decision. There the Court found that a binding contract had existed as of the date of its execution, although it remained executory until judicial approval was obtained. While the agreement gave the seller the right to the contract price as of the contract date and to interest between that date and the date of actual payment, the taxpayer-buyer could not, after the contract was executed, by his own volition decline to pay the principal amount to the seller. Here, in contrast, petitioner was under no obligation to pay the principal amount up to the moment he decided to do so. Therefore no indebtedness existed until the same moment.

Nor is there any conflict with *Deputy* v. *duPont*, 308 U.S. 488. There the taxpayer, in borrowing corporate stock, had promised to pay the lender, until the stock was returned in kind, an amount equal to all dividends paid on the stock plus any taxes result-

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[2] The character of the payments for tax purposes are not controlled by the designations given them by the parties. *Doyle* v. *Mitchell Brothers Co.*, 247 U.S. 179.

ing from the agreement. In rejecting the contention that these payments constituted deductible "interest * * * on indebtedness" under the then predecessor of Section 163(a),[3] the Court recognized that although the taxpayer was obliged to repay the stock, "an obligation is not necessarily an 'indebtedness' ". Here, petitioner had neither obligation nor indebtedness, since he had the option to determine for himself alone whether or not to pay the amounts he claims were his "debt".

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JOHNNIE M. WALTERS,
Assistant Attorney General.

WILLIAM A. FRIEDLANDER,
KENNETH L. GROSS,
Attorneys.

APRIL 1969.

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[3] Section 23(b) of the Revenue Act of 1928, 45 Stat. 799.

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